Supreme Court, U.S.
FILED
JUN 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

(6)

NO. 86-1873

* * * * * * * * * * * * * * *

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner

v.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL,

Respondents

* * * * * * * * * * * * * *

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS**

**BRIEF FOR THE UNIVERSITY INTERSCHOLASTIC
LEAGUE IN OPPOSITION**

* * * * * * * * * * * * * *

PETER A. NOLAN

BUNTON, NOLAN, ODÉ & COOPER
511 West Seventh
Austin, Texas 78701
512/480-8227

ATTORNEYS FOR RESPONDENTS

QUESTIONS PRESENTED

1. Whether the Texas Courts properly held that Petitioner failed to prevail on a substantial Federal Constitutional issue.

2. Whether the Texas Courts are required to specifically address appellate points which do not raise substantial issues.

3. Whether the Texas Supreme Court properly refused Petitioner's Writ of Error.

PARTIES BELOW

In the Court below, the Petitioner herein, Gregory Jones, by and through his next friend, Larry Jones, was Petitioner. The Respondent, University Interscholastic league, and the Executive Committee of District 9AAAAA, were Respondents.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES BELOW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS AND JUDGMENT BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2,3,4
STATEMENT OF THE CASE	4
ARGUMENT	9
I. The Texas Courts Properly Held That Petitioner Failed To Prevail On A Substantial Federal Constitutional Issue	9
A. Due Process	10
B. Equal Protection	10
C. Familial Privacy	11
II. The Texas Appellate Courts Are Not Required to Write Opinions Addressing Points Which Do Not Raise Substantial Issues	13
III. The Texas Supreme Court Properly Refused Petitioner's Writ of Error	14
CONCLUSION	15
CERTIFICATE OF SERVICE	16

TABLE OF AUTHORITIES

Cases **Page**

Hardy v. University Interscholastic League, 759 F.2d. 1233 (5th Cir. 1985) 15

Maroney v. University Interscholastic League, 764 F.2d. 403 (5th Cir. 1985) 15

Mitchell v. Louisiana High School Athletic Ass'n., 430 F.2d. 1155 (5th Cir. 1970) 10,11,15

Niles v. University Interscholastic League, 715 F.2d. 1027 (5th Cir. 1983), cert. denied _____ U.S. _____ (1984).....10,12,15

Oyler v. Boyles, 268 U.S. 448 (1962) 11

Sanger v. First National Bank of Amarillo, et al., 170 S.W. 1087 (Tex. App.-Amarillo 1914) 14

Walsh v. Louisiana High School Athletic Ass'n., 616 F.2d. 152 (5th Cir. 1980) cert. denied, 449 U.S. 1124, 101 S.Ct. 939, 67 L.Ed. 2d. 109 (1981) 12

Constitution

U.S. Const. amends v. XIV 4

Statutes

42 U.S.C. 1983, 1988 (1981) 2,3

Administrative Rules

UIL Constitution and Contest Rules (1985) Rule 409 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. 86-1873

* * * * * * * * * * * * * * *

GREGORY JONES, BY AND THROUGH
HIS NEXT FRIEND, LARRY JONES,

Petitioner

V.

UNIVERSITY INTERSCHOLASTIC LEAGUE, ET. AL,

Respondents

* * * * * * * * * * * * * *

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS**

**BRIEF FOR THE UNIVERSITY INTERSCHOLASTIC
LEAGUE IN OPPOSITION**

* * * * * * * * * * * * * *

OPINIONS BELOW

The Supreme Court of Texas overruled the Petitioner's Motion for Rehearing on the 21st day of January, 1987. The Supreme Court of Texas overruled the Petitioner's Application

for Writ of Error on the 17th day of December, 1986. The Court of Appeals' opinion from which the Petitioner appealed to the Supreme Court of Texas was entered on the 18th day of September, 1986.

JURISDICTION

The Order of the Supreme Court of Texas overruling the Petitioner's Motion for Rehearing was entered on the 21st Day of January, 1987. Jurisdiction of this Court is invoked under 28 U.S.C. §1254.

STATUTES INVOLVED

United States Code, Title 42

Civil Rights Act

42 U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or

other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

42 U.S.C. §1988

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the Court having jurisdiction of such civil or criminal cause is held as far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature in the infliction of punishment of the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, Title IX of Public Law 92-318, or the VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the

United States, a reasonable attorney's fee as part of the costs."

U.S. CONST. amend. V

"No person shall be denied due process of law or be deprived of life, liberty, or property, without due process of law."

U.S. CONST. amend. XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

1. The University Interscholastic League is the state-wide organization of public schools in Texas formed to regulate elementary and secondary inter-school competition. The member schools agree to abide by the U.I.L. Constitution and Contest Rules in the regulation of inter-school competition. Section 409 of the U.I.L. Constitution and Contest Rules provides as follows:

Section 409 Changing Schools for Athletic Purposes:

> (a) INELIGIBLE: A student who changes schools for athletic purposes is not eligible to compete in varsity league athletic contest(s) at the school to which he moves for at least one calendar year.

2. Petitioner, Gregory Jones, was a junior in high school at Irving-McArthur High School in the Fall of 1984. The school is located in Irving, Texas, a suburb of Dallas, Texas. His family were long time residents of Irving, and his parents had worked in Dallas at the same jobs for many years.

Petitioner has played football at McArthur since his sophomore year when he was the starting quarterback for the junior varsity team; however, in 1984 Petitioner found himself the third string quarterback on the varsity team, and he would very likely be only the second string quarterback his senior year if he stayed at McArthur. The week after his bench warming season ended, in the middle of the fall of 1984 school semester, Petitioner's

family "moved" to another suburb of Dallas, Highland Park, and enrolled Petitioner in Highland Park Highschool. The move was not made because of a change in jobs; the Jones retained ownership of their Irving home and "rented" a home in Highland Park from an aunt of Larry Jones. Coincidentially, Greg Jones was a good passing quarterback who would not be able to play as much in the run oriented offense of Irving- McArthur, but who might be able to play at Highland Park because they had just lost their star passing quarterback to graduation and for the first time in years, no heir apparent waited in the wings.

A telephone call to school officials suggested that Petitioner had moved to get a better chance at starting quarterback. Principals from the local school district met with Petitioner and his parents to determine if this was so. Petitioner's father testified that the family had moved nine miles to save gasoline money and reduce commuting distances. The school principals decided that

the move was more greatly influenced by the family's desire to see Petitioner start as quarterback for Highland Park, because the commuting problems and the availability of the house existed long before the move, yet the move was timed immediately after the end of Petitioner's football season on the bench.

3. Petitioner filed suit in State District Court in Dallas, Texas alleging numerous violations of constitutional rights. Respondents removed the case to the United States District Court for the Northern District of Texas, Dallas Division, and then moved to dismiss the lawsuit for the failure of Petitioner to even state a Federal Claim. The United States District Court agreed, and the case was remanded to the State District Court to try state law issues because Petitioner had failed to even allege a federal cause of action. In a fence-straddling order, the State Court improperly substituted its judgment for those of the school principals, and decided that Petitioner should play

football; but even this desire by the State District Court to be "fair" could not conjure up violations of the United States Constitution to justify any application of 42 U.S.C. §1983 et. seq. or the award of attorney's fees.

4. Petitioner appealed the trial court's denial of attorney's fees. This appeal did not raise a substantial question, and the appeal was dismissed by the Texas Court of Appeals for the Fifth Supreme Judicial District of Dallas. The issue of the power of the trial court to substitute its judgment for the judgment of the local school officials, raised by Respondent, was declared to be moot since Petitioner had already graduated from High School.

5. The Texas Supreme Court overruled Petitioner's Application for Writ of Error and subsequent Motion for Rehearing.

ARGUMENT

I.

The Texas Courts Properly Held That Petitioner Failed To Prevail On A Substantial Federal Constitutional Issue

Two types of issues were presented to the Texas Courts of Appeals: (1) the issue of the validity of the trial court's action in substituting its judgment for the local schools' judgment; and (2) the issue of a constitutional violation that would give rise to thousands of dollars of attorney's fees. The issues are intertwined. If the local schools acted unconstitutionally, then their actions were not valid. Petitioner attacked the schools' actions based upon Due Process, Equal Protection and Familial Privacy issues. Briefly, all of these attacks are frivolous.

A. Due Process.

The Federal Constitution's due process guarantees do not protect a student's interest in participating in extracurricular activities. See Niles v. University Interscholastic League, 715 F.2d. 1027, 1031 (5th Cir. 1983), cert. denied _____ U.S. _____ (1984); Mitchell v. Louisiana High School Athletic Ass'n., 430 F.2d. 1155, 1158 (5th Cir. 1970). Petitioner's desire to be the starting quarterback on the varsity team in no way involves a threatened deprivation of liberty or property interests necessary to invoke the Federal constitution.

B. Equal Protection.

Petitioner was not a member of a suspect class, nor were their any constitutionally protected rights involved in his desire to be the staring quarterback. Grounds supporting a finding of a denial of equal protection because Petitioner's treatment was deliberately based upon an unjustifiable

standard such as race, religion, or other arbitrary classification, were not even alleged. See Oyler v. Boyles, 268 U.S. 448 at 456 (1962). The Texas Court of Appeals found no showing of the actual and purposeful discrimination imagined by Petitioner. He was given more protection than any student in the last thirty years. The desire of the school district to grant him more rights than the average student was not found to be a denial of equal protection.

C. Familial Privacy

An allegation of improper denial by a state body of a student's right to participate in interscholastic athletics fails to raise a substantial federal question. Mitchell v. Louisiana High School Athletics Ass'n., 430 F.2d. 1155, 1157-58 (5th Cir. 1970). Petitioner did not allege that he could not move or live with his family. He simply could not hop from high school to high school in search of a team and continue to play varsity

football. Just as in Niles v. The University Interscholastic League, 715 F.2d. 1027 (5th Cir. 1983), cert. denied _____ U.S. _____ (1984), "the encroachment of the [U.I.L.] rule on the right to travel and upon the freedom of family associations [is] 'both limited in scope and insignificant in magnitude "citing Walsh v. Louisiana High School Athletic Ass'n., 616 F.2d. 152, at 158 (5th Cir. 1980) cert. denied, 449 U.S. 1124, 101 S.Ct. 939, 67 L.Ed. 2d 109 (1981). The right of association is a fundamental right and does protect associational activities relating to the family, but the decision to disallow Petitioner to play varsity quarterback does not significantly encroach on this right, because there is no similar fundamental right to play football.

Playing football in Texas is important. Being the starting quarterback is even more important, but the decision as to who fills that role does not involve due process or familial privacy, and without some form of

unjustifiable standard such as race or religion or some constitutionally protected right, it does not involve equal protection.

II.

The Texas Appellate Courts Are Not Required To Write Opinions Addressing Points Which Do Not Raise Substantial Issues.

Rule 90 of the Texas Rules of Appellate Procedure requires that the Texas Court of Appeals address only substantial issues which are raised on appeal. Petitioner has never raised a substantial constitutional question. He has known this since the United States District Court remanded his case for failing to allege any Federal cause of action. The fact that the Texas Court of Appeals devoted no more written response to his constitutional allegations than the Federal District Court did, should not have surprised him. There is no statute or rule of the Texas Supreme Court that requires Courts of Civil Appeals to take up the assignments of frivolous issues in appellant's brief and dispose of them

seriatim. See Sanger v. First National Bank of Amarillo, et. al., 170 S.W. 1087 (Tex. App.-Amarillo 1914).

Even if there were such a useless requirement, there is no requirement for the Texas Supreme Court to grant a Writ of Error to simply affirm the holding of a lower court, even if "...the Supreme Court is not satisfied that the opinion of the Court of Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal..." Just as this Court need not write an opinion addressing each point raised by Writ of Certiorari when denying it, neither Due Process nor Equal Protection principals force the Texas Supreme Court to write an opinion refusing a Writ of Error.

III.

The Texas Supreme Court Properly Refused Petitioner's Writ of Error

The Texas Supreme Court refused to overturn years of federal precedent that

decisions on who plays what position on the local high school football team should be left to the local high school officials. The cases of Mitchell v. Louisiana High School Athletic Ass'n., 430 F.2d. 1155 (5th Cir. 1970); Hardy v. University Interscholastic League, 759 F.2d. 1233 (5th Cir. 1985) and Niles v. University Interscholastic League, 715 F.2d. 1027, (5th Cir. 1983), cert. denied ____ U.S. _____ (1984). 104 S.Ct. 1289, 79 C.Ed. 2d. 691 (1984) completely foreclose Petitioner's claims. See Maroney v. University Interscholastic League, 764 F.2d. 403 (5th Cir. 1985). The refusal of Petitioner's Writ of Error was proper.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,
BUNTON, NOLAN, ODÉ & COOPER

By: Peter A Nolan
PETER A. NOLAN

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing have been mailed by certified mail, return receipt requested, No. P-063-197-088, on this 19 day of June, 1987 to the following counsel of record:

Samuel L. Boyd, Esq.
Counsel for Petitioner
1200 One Main Place
Dallas, Texas 75250

Peter A Nola

PETER A. NOLAN